

United States Department of the Interior

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Western Region Office 1999 Broadway, Suite 3320 Denver, CO 80202-3050



NM-0042-A-Y-02

December 23, 2014

Certified Mail Return Receipt Requested

Ms. Jane Diamond Director, Water Division, Region 9 Environmental Protection Agency 75 Hawthorne Street, WTR-1 San Francisco, California 94105

RE: NHPA Section 106 Consultation – Four Corners Power Plant and Navajo Mine Energy Project, Final Programmatic Agreement for the Four Corners Power Plant, Action Requested

Dear Ms. Diamond:

The Office of Surface Mining Reclamation and Enforcement (OSMRE) requests the Environmental Protection Agency (EPA) signature to the enclosed Programmatic Agreement (PA). Your prompt response is necessary in order to meet project timelines. OSMRE anticipates receiving all signatures by January 22, 2015. I will provide reminder phone calls to any signatory party whose signature is absent on January 15, 2015. Please sign the PA on page 52 and return the signature page to me at:

Jeremy Iliff
Office of Surface Mining Reclamation Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202

Pursuant to 36 CFR § 800.14(b), the OSMRE has elected to execute two PAs for the Four Corners Power Plant (FCPP) and Navajo Mine Energy Project (one for the Navajo Mine and one for the FCPP, ancillary facilities and Transmission Lines), given the different aspects of the Undertaking, the jurisdiction of various federal agencies, and the separate Project Proponents and their respective responsibilities. This letter transmits the final PA for the FCPP. Mr. Gary Sheth and Ms. Karen Vitulano from the EPA have assisted OSMRE in reviewing and developing both PAs, including the current final FCPP PA.

Please find the enclosure "Programmatic Agreement Regarding Management of Historic Properties Associated with the Four Corners Power Plant, Ancillary Facilities, and Transmission

Lines." OSMRE held a conference call on Thursday, December 18, 2014 between the signatory parties. All party representatives identified the document as having no unresolved issues at the conclusion of the call and further identified who within their respective agencies would be authorized to sign the PA. OSMRE requested that we receive back all signatures by January 22, 2015. The Advisory Council for Historic Preservation (ACHP) indicated that they would sign after all other signatories have signed. Therefore, we request your prompt signature in order to provide proof of all other party signatures to the ACHP.

Thank you for your continued assistance with the Four Corners Power Plant and Navajo Mine Energy Project. Please contact me at (303)293-5016 or jiliff@osmre.gov should you have any questions.

Sincerely,

Jeremy Iliff

Archaeologist, Indian Programs Branch,
Program Support Division, Western Region
Office of Surface Mining Reclamation and

Enforcement

1999 Broadway, Suite 3320

Denver, Colorado 80202

Enclosure

Programmatic Agreement

between

Office of Surface Mining Reclamation and Enforcement,
Bureau of Indian Affairs,
Bureau of Land Management,
U.S. Environmental Protection Agency,
National Park Service,
Navajo Nation Tribal Historic Preservation Officer,
Hopi Cultural Preservation Office,
Zia Pueblo,

Advisory Council on Historic Preservation,
New Mexico State Historic Preservation Officer,
Arizona State Historic Preservation Officer,
New Mexico State Land Office,
Arizona Public Service Company, and
Public Service Company of New Mexico
regarding

Management of Historic Properties Associated with the Four Corners Power Plant, Ancillary Facilities, and Transmission Lines

TABLE OF CONTENTS

ſ.	RECITALS	1
II.	STIPULATIONS	7
	Stipulation I. Definitions	7
	Stipulation II. Standards	7
	Stipulation III. Confidentiality	7
	Stipulation IV. Responsibilities of Federal Agencies with Land Management and Other Permitting Authorities	8
	Stipulation V. General Consultation Process for FCPP Site and Transmission Lines	8
	A. Consultation	- 8
	B. Identification and Evaluation of Historic Properties Conducted to Date	8
	C. Ongoing Identification and Evaluation of Historic Properties	9
	D. Treatment of Historic Properties and Resolution of Adverse Effects	9
	E. Historic Properties Treatment Plan(s)	10
	Stipulation VI. Navajo Protocols for the APE on Navajo Lands and Allotments Owned by Individual Navajo Members	11
	A. Coordination with the BIA and Navajo Nation THPO	11
	B. Operation and Maintenance	12
	Stipulation VII. Hopi Protocols for APS Transmission Line ROW APE on Hopi Indian Reservation	17
	A. Hopi Cultural Preservation Office Authority	17
	B. Coordination with the BIA, HCPO, and Arizona SHPO	18
	C. Routine Maintenance	19
	D. Historic Property Treatment Plan(s) for Mitigation of Adverse Effects to Archaeological	al
	Sites	22
	E. Historic Property Treatment Plan(s) for Mitigation of Adverse Effects to Non- Archaeological Sites	25
	F. Emergencies	26
	G. Replacement of SHPO by Hopi THPO	27
	Stipulation VIII. Protocols for Federal, State, and Private Lands, and Zia Pueblo Lands, in Alfor PNM Transmission Lines	PE 27
	A. Coordination with the BIA, Applicable Federal Land Manager, Zia Pueblo, NM SLO and/or New Mexico SHPO	27
	B. Operation and Maintenance	28
	C. Emergency Maintenance and Response	33

V.	INVITED SIGNATORY PARTIES	56
IV.	SIGNATORY PARTIES	42
III.	EXECUTION	41
	Stipulation XX. Scope of the Agreement	41
	Stipulation XIX. Coordination with Other Federal Reviews	41
	Stipulation XVIII. Termination	40
	Stipulation XVII. Amendment	40
	Stipulation XVI. Duration	40
	Stipulation XV. Effective Date	39
	Stipulation XIV. Dispute Resolution	39
	Stipulation XIII. No Waiver of Rights or Obligations between APS and Navajo Nation	38
	Stipulation XII. Reporting	37
	Stipulation XI. Curation	35
	B. Unanticipated Discovery of Human Remains, Funerary Objects, Sacred Objects, or Obj of Cultural Patrimony	ects 34
	A. Unanticipated Discoveries of Archaeological Resources	33
	Stipulation X. Unanticipated Discoveries During Operation and Maintenance of the Project	33
	Stipulation IX. Cultural Resources Awareness Training	33

Attachments

ATTACHMENT A: Project Maps

ATTACHMENT B: List of Tribes Invited to Participate and Consultation Record

ATTACHMENT C: List of National Register Properties

ATTACHMENT D: Agency Consulting Tribes Proponents Contact List

ATTACHMENT E: Definitions

ATTACHMENT F: Regulations and Guidelines Referenced

ATTACHMENT G: List of Areas to be Surveyed

ATTACHMENT H: Unanticipated Discovery Procedures and Protocols

RECITALS

WHEREAS, Arizona Public Service Company (APS) and Navajo Transitional Energy Company, LLC (NTEC) are proponents of the Four Corners Power Plant and Navajo Mine Energy Project (the Project) whose purpose is to facilitate ongoing operations at the Four Corners Power Plant (FCPP) and on NTEC's Navajo Mine lease to provide for long-term, reliable, continuous, and uninterrupted base load electrical power to customers in the southwestern United States, using a reliable and readily available fuel source; and

WHEREAS, the Bureau of Indian Affairs (BIA) (Navajo Region Office and Western Region Office), Bureau of Land Management (BLM), U.S. Environmental Protection Agency (EPA), and National Park Service (NPS) have designated the Office of Surface Mining Reclamation and Enforcement (OSMRE) as the lead federal agency for purposes of compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) in accordance with 36 Code of Federal Regulations (CFR) § 800.2(a)(2), until this Programmatic Agreement (the Agreement) is executed and then, if a Record of Decision (ROD) is issued, the BIA will become the lead federal agency for purposes of NHPA implementation; and

WHEREAS, NTEC is seeking a Surface Mining Control and Reclamation Act (SMCRA) permit for a new 5,600-acre permit area at Navajo Mine within its existing lease and is also seeking to renew its permit on the Navajo Mine in 2014 for up to 25 years in increments of 5-year permit renewals from OSMRE and to re-align Burnham Road; and

WHEREAS, OSMRE receives and considers applications for and renewals of SMCRA permits and has determined the issuance of a SMCRA permit for the Navajo Mine includes review under Section 106 of the NHPA (16 U.S. Code [USC] 470f, as amended) and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800) and is therefore a Signatory to this Agreement; and

WHEREAS, APS operates the FCPP, which receives coal solely from the Navajo Mine, and executed a lease amendment with the Navajo Nation (Amendment and Supplement No. 3 to Supplemental and Additional Indenture of Lease Between the Navajo Nation and Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company) on March 7, 2011, which provides Navajo Nation consent to extend the term of the FCPP lease for an additional 25 years, beginning on July 7, 2016, until 2041, and also provides Navajo Nation consent to renew rights-of-way (ROWs) for both the plant site and certain transmission lines and related facilities until 2041; and

WHEREAS, APS has also received the consent of the Hopi Tribe to extend the term of the ROW for a Transmission Line across the Hopi Indian Reservation until 2041 and that Release

and Consent Agreement between the Hopi Tribe and APS became effective November 1, 2013; and

WHEREAS, Public Service Company of New Mexico (PNM) and the Navajo Nation have executed a ROW Extension/Renewal Agreement, which was approved by the Navajo Nation in October 2010 and expires April 7, 2030; and

WHEREAS, the Project requires federal approvals for portions of four Transmission Lines, including the Moenkopi switchyard and ancillary facilities (hereinafter "Transmission Lines") (Attachment A) that are owned and operated by either APS or PNM and that interconnect with the FCPP and its ancillary facilities and transmit FCPP power and thus are part of the Undertaking:

- APS FCPP to Cholla 345-kilovolt (kV) Transmission Lines, terminating at the Navajo Indian Reservation southern boundary,
- APS FCPP to El Dorado 500-kV Transmission Line through and including Moenkopi and 14-mile segment from Moenkopi to the Navajo Indian Reservation western boundary,
- PNM FCPP to San Juan Generating Station FC 345-kV Transmission Line, and
- PNM FCPP to West Mesa FW 345-kV Transmission Line; and

WHEREAS, Section 106 of the NHPA and its implementing regulations require a federal agency with direct or indirect jurisdiction over a federal, federally assisted, or federally permitted or approved Undertaking to take into account the effects of the Undertaking on historic properties included in or eligible for the National Register of Historic Places (NRHP), afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the Undertaking and consult with applicable Tribal and State Historic Preservation Offices and Indian tribes; and

WHEREAS, OSMRE has determined that the Project approvals constitute an "Undertaking" as defined at 36 CFR § 800.16(y) and that the operation and maintenance of the Project components may have an adverse effect on properties listed in or eligible for listing in the NRHP, and OSMRE has consulted with the Navajo Nation Tribal Historic Preservation Officer (NNTHPO), Hopi Cultural Preservation Office (HCPO), Zia Pueblo, New Mexico and Arizona State Historic Preservation Officers (SHPOs), BLM, NPS, EPA, BIA, and the ACHP for the Project, pursuant to 36 CFR Part 800; and

WHEREAS, OSMRE, in consultation with the NNTHPO, HCPO, Zia Pueblo, New Mexico SHPO, Arizona SHPO, BLM, NPS, EPA, BIA, and the ACHP, has determined that an Agreement is appropriate to govern the implementation of the Undertaking because all effects of the Undertaking on historic properties cannot be known prior to the approval of the Project and there is the potential to encounter unanticipated historic properties during the life of the Project,

and thus final identification and evaluation of certain historic properties may be deferred to a later point in time as provided for in this Agreement; and

WHEREAS, pursuant to 36 CFR § 800.14(b), OSMRE has elected to execute two Agreements for the FCPP and the Project (one for the Navajo Mine and one for the FCPP, ancillary facilities, and Transmission Lines), given the different aspects of the Undertaking, the jurisdiction of various federal agencies, and the separate Project Proponents and their respective responsibilities; and

WHEREAS, OSMRE intends to amend the existing Agreement for the Navajo Mine and has prepared this Agreement to address the FCPP, ancillary facilities, and Transmission Lines, and associated responsibilities related to continued operation of those facilities ("FCPP Programmatic Agreement"); and

WHEREAS, OSMRE, in consultation with the NNTHPO, HCPO, Zia Pueblo, New Mexico SHPO, Arizona SHPO, BLM, NPS, EPA, BIA, and the ACHP, has determined and documented the FCPP, ancillary facilities, and Transmission Lines Project Area of Potential Effect (APE) as depicted in Attachment A including:

- All areas within the power plant lease and ROW boundaries, including proposed new ash disposal areas, as well as Morgan Lake and the existing lease areas or corridors for a water pipeline from the power plant area to the San Juan River, the water pipeline access road from the pumping plant to Morgan Lake, a pumping plant on the southern side of the San Juan River, a 69-kV Transmission Line from the power plant to the pumping station, County Road 6675 from the FCPP to the San Juan River, and
- The four existing Transmission Line ROW corridors, including PNM FCPP to West Mesa FW 345-kV (100-foot ROW), PNM FCPP to San Juan Generating Station FC 345-kV (100-foot ROW), APS FCPP to Cholla 345-kV (315-foot ROW for approximately 96 miles and two separate 195-foot corridors for approximately 40 miles), APS FCPP to El Dorado 500-kV (225-foot ROW and expanded to 328 feet (100 meters) on either side of the ROW on the Hopi Indian Reservation), the Moenkopi switchyard, and other ancillary facilities; and

WHEREAS, OSMRE has determined that federal actions associated with APS's lease extensions and renewal of plant site and Transmission Line ROWs are part of the Undertaking, and that APS will have continuing obligations with respect to operation and maintenance of these existing facilities and under this Agreement, and OSMRE has therefore invited APS to be an Invited Signatory to this Agreement; and

WHEREAS, OSMRE has determined that federal actions associated with PNM's renewal of Transmission Line ROWs are part of the Undertaking, and that PNM will have continuing obligations with respect to operation and maintenance of these existing facilities and under this PA, and OSMRE has therefore invited PNM to be an Invited Signatory to this Agreement; and

WHEREAS, the FCPP and associated APS ancillary facilities and Transmission Lines are located on Navajo Indian and Hopi Indian Reservation lands held in trust by the United States; and

WHEREAS, PNM Transmission Lines are located on the Navajo Nation and Zia Pueblo lands held in trust by the United States and portions of such Transmission Lines are also located on federal lands administered by the BLM and NPS, as well as New Mexico State Trust Lands, private lands, and allotments owned by individual Navajo members within the exterior boundaries or constitute dependent Indian communities; and

WHEREAS, the BIA has determined that reauthorization of the FCPP lease and plant site ROWs and ancillary facility and Transmission Line ROWs on Indian Trust lands is a federal action and an Undertaking that requires the BIA to comply with Section 106 and 36 CFR Part 800 and the BIA Navajo Nation Region Office serving Navajo Nation, BIA Western Region Office serving Hopi Tribe, and BIA Southwest Region Office, which serves the Zia Pueblo, are therefore Signatories to this Agreement; and

WHEREAS, the NNTHPO performs selected historic preservation functions for the BIA pursuant to the Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) within the Navajo Nation; and

WHEREAS, the BLM has determined that approving any Transmission Line ROW reauthorization crossing BLM lands is a federal action and part of the Undertaking that requires the BLM to comply with Section 106 of the NHPA and 36 CFR Part 800 and is therefore a Signatory to this Agreement; and

WHEREAS, the EPA Region 9 Water Division has been invited to sign this Agreement as a Signatory; and

WHEREAS, the reauthorization of the FCPP lease and plant site ROWs and ancillary facility and Transmission Line ROWs on the Navajo Indian Reservation require approval by the Navajo Nation and the tribe is therefore a Signatory to this Agreement, by and through the NNTHPO, who has assumed the responsibilities of the SHPO for Section 106 on Navajo Nation land pursuant to 36 CFR § 800.6(c); and

WHEREAS, the renewal of the Transmission Line crossing the Hopi Indian Reservation requires approval by the Hopi Tribe and the tribe is therefore a Signatory to this Agreement; and

WHEREAS, the renewal of the FW Transmission Line crossing Zia Pueblo requires approval by Zia Pueblo and the tribe is therefore a Signatory Party to this Agreement; and

WHEREAS, the renewal of the FW Transmission Line crossing New Mexico State Trust Lands is a connected action and a state action under the jurisdiction of the New Mexico State Land Office (NM SLO). OSMRE has consulted with and invited the NM SLO to sign this Agreement as an Invited Signatory; and

WHEREAS, NPS has assumed a pre-existing, perpetual ROW for the PNM FCPP to West Mesa FW 345-kV Transmission Line crossing the Petroglyph National Monument, and has been invited to sign this Agreement as a Signatory; and

WHEREAS, PNM's FCPP to West Mesa FW 345-kV Transmission Line and FCPP to San Juan Generating Station FC 345-kV Transmission Line cross New Mexico State Trust and private lands and the New Mexico SHPO is charged with responsibilities to preserve, protect, and enhance the prehistoric, historic, and cultural heritage of New Mexico for the benefit of present and future generations under the New Mexico Cultural Properties Act § 18-6-1 et seq., New Mexico Statutes Annotated (NMSA) 1978; the New Mexico Prehistoric and Historic Sites Protection Act § 18-8-1 et seq., NMSA 1978; and the New Mexico Cultural Properties Protection Act § 18-6A-1, et seq., NMSA 1978, and is therefore a Signatory to this Agreement; and

WHEREAS, OSMRE has made diligent efforts to involve the public, property owners, and other interested parties early in the federal decision-making process by notifying them of the Project and its impacts through the NEPA process and providing them with information on the Project and opportunities to comment, including at several public meetings, as required by the Council on Environmental Quality's regulations implementing NEPA (40 CFR § 1506.6) and the NHPA's implementing regulations (36 CFR §§ 800.2(d); 800.6(1)(4));

WHEREAS, pursuant to the Arizona State Historic Preservation Act of 1982 including Arizona Revised Statutes 41-862 through 41-864, the Arizona SHPO provides advice for the protection, preservation, and interpretation of historic properties within the State of Arizona and is therefore a Signatory to this Agreement; and

WHEREAS, OSMRE has consulted with the New Mexico SHPO and the Arizona SHPO pursuant to Section 800.6 of the regulations (36 CFR Part 800) implementing Section 106 of the NHPA (16 USC 470f) and they are Signatories to this Agreement; and

WHEREAS, pursuant to 36 CFR § 800.2(c)(2)(i)(B), the BIA must also consult with the Arizona SHPO, in addition to the Hopi Tribe, regarding undertakings occurring on or affecting historic properties on Hopi tribal lands because the Hopi Tribe has not assumed SHPO functions; and

WHEREAS, should the Hopi Tribe assume the function of the Arizona SHPO under Section 101(d)(2) of the NHPA with respect to the Hopi Indian Reservation, the roles of the Arizona SHPO will be replaced by the Hopi THPO; and

WHEREAS, OSMRE has invited the Indian tribes listed in Attachment B via letter dated September 13, 2012, to participate in consultation; and

WHEREAS, the ACHP has participated in consultation and has been invited by OSMRE under 36 CFR § 800.6(c)(2) to sign this Agreement as a Signatory; and

WHEREAS, Attachment C includes summary information on the identification, evaluation, and effect assessment updates on historic properties within the APE; and

WHEREAS, Attachment D summarizes consultation with Indian tribes and nations, SHPOs, and other agencies; and

WHEREAS, the Consulting Parties recognize that the Navajo Nation has granted APS a "covenant not to regulate" in the Navajo Nation's lease agreements with APS, including Lease Amendment #3; and

WHEREAS, a proposed draft of this Agreement has been circulated for public comment as an attachment to the draft Environmental Impact Statement for the Project, and OSMRE and Consulting Parties to this agreement have taken into consideration applicable public comments received regarding the draft Agreement in preparing this final Agreement; and

NOW, THEREFORE, OSMRE, BIA, BLM, EPA, NPS, NNTHPO, the HCPO, Zia Pueblo, New Mexico SHPO, Arizona SHPO, NM SLO, ACHP, APS, and PNM agree that the following stipulations and procedures will be implemented to take into account the effect of the Undertaking on historic properties and to satisfy all responsibilities under Section 106 of the NHPA.